

## **REMARKS**

Applicants request the non-entry of previously filed amendments and entry of the amendments described herein.

Claims 16, 18-28, 32-35, and 49-79 are cancelled. Claims 1 and 36-43 are amended. Claims 1-15, 17, 29-31, and 36-48 are now pending. Reconsideration is respectfully requested in view of the following remarks.

### **I. Interview**

Applicant thanks Examiner Jiang for the interview on July 27, 2004. At the interview Applicants and Examiner discussed the pending claims and the rejections of record in the Final Office action.

### **II. Claim Rejections Under 35 U.S.C. 102:**

The Examiner rejected claims 1-15 and 17-41 under 35 U.S.C. 102(b) as being anticipated by Nyce (5,527,789).

Applicants have amended independent claim 1 to recite that the “composition is an inhalable or respirable formulation comprising powdered or liquid particles of about 0.1  $\mu$ m to about 100  $\mu$ m in size.” The Nyce patent does not disclose a composition with particles in the size range listed in pending claim 1. Hence, Applicant respectfully requests the withdrawal of this rejection.

### **III. Claim Rejections Under 35 U.S.C. 103(a):**

The Examiner rejected claims 42-48 under 35 U.S.C. 103(a) as being unpatentable over Nyce (5,527,789). Applicants have amended these claims and hence believe that this rejection is now moot.

### **IV. Double Patenting:**

The Examiner has rejected claims 1-15 and 17-48 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-19 of U.S. Patent No. 5,527,789. Applicants have amended independent claim 1 to recite that the “composition is an inhalable or respirable formulation comprising powdered or liquid particles of about 0.1  $\mu$ m to

about 100  $\mu\text{m}$  in size.” The claims 13-19 Nyce patent does not disclose a composition with particles in the size range listed in pending claim 1. Hence, Applicant respectfully requests the withdrawal of this rejection.

The Examiner has provisionally rejected claims 1-15 and 17-48 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 159 of co-pending application No. 10/072,010. Applicants will address this rejection upon receipt of an indication of allowable claims in this patent application.

### **CONCLUSION**

In light of the remarks set forth above, Applicants believe that they are entitled to a letters patent. Applicants respectfully solicit the Examiner to expedite the prosecution of this patent application to issuance. Should the Examiner have any question, the Examiner is encouraged to telephone the undersigned.

Respectfully submitted,

Date: October 4, 2004

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